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IN THE
Supreme Court of the United States

WELLS FARGO & CO.
and WELLS FARGO BANK, N.A.,
Petitioners,

v.

CITY OF MIAMI,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Eleven Circuit

BRIEF FOR PETITIONERS

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QUESTIONS PRESENTED

1. Whether the term "aggrieved" in the Fair Housing Act imposes a zone-of-interests requirement more stringent than the injury-in-fact requirement of Article III, and whether the City falls within the zone of interests.

2. Whether the directness or remoteness of a plaintiff's injury is relevant to the Fair Housing Act's proximate-cause requirement, and whether the City has pleaded an injury proximately caused by a Fair Housing Act violation.

PARTIES TO THE PROCEEDING

Wells Fargo & Co. and Wells Fargo Bank, N.A., petitioners here, were defendants-appellees in the Court of Appeals.

The City of Miami, respondent here, was plaintiff-appellant in the Court of Appeals.

RULE 29.6 DISCLOSURE STATEMENT

Wells Fargo & Co. has no parent corporation. Berkshire Hathaway Inc. is a publicly held company that owns 10% or more of Wells Fargo & Co.'s stock. With the exception of Berkshire Hathaway Inc., no other publicly held company owns 10% or more of Wells Fargo & Co.'s stock.

Wells Fargo Bank, N.A.'s parent corporation is Wells Fargo & Co., and Wells Fargo & Co. is a publicly held company that owns 10% or more of Wells Fargo Bank, N.A.'s stock. With the exception of Wells Fargo & Co., no other publicly held company owns 10% or more of Wells Fargo Bank, N.A.'s stock.

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported at 801 F.3d 1258. Pet. App. 1a-19a. The orders of the District Court granting petitioners' motion to dismiss and denying reconsideration are unreported. *Id.* at 72a-73a, 81a-82a.

JURISDICTION

The Eleventh Circuit entered judgment on September 1, 2015, Pet. App. 1a, and denied a timely petition for panel rehearing on November 5, 2015, *id.* at 100a. On January 25, 2016, Justice Thomas extended the time within which to file a petition for a

writ of certiorari to and including March 4, 2016, and the petition was filed on that date. On June 28, 2016, this Court granted the petition and consolidated this case with No. 15-1111, *Bank of America Corp.* v. *City of Miami*. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Fair Housing Act (FHA) are reprinted in an addendum to this brief. Add. 1a-7a.

STATEMENT

A. The Fair Housing Act

One of our Nation's most important statutes, Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 81—commonly known as the Fair Housing Act—prohibits discrimination in housing. For example, § 804(b) of the FHA prohibits discrimination in the "terms, conditions, or privileges of sale or rental of a dwelling." 42 U.S.C. § 3604(b). And § 805(a) prohibits discrimination in "residential real estate-related transactions," including the "making or purchasing of loans * * * secured by residential real estate." *Id.* § 3605(a), (b)(1). The types of discrimination covered include discrimination on the basis of race, color, religion, sex, and national origin. *Id.* §§ 3604(b), 3605(a).

Section 813 of the FHA authorizes an "aggrieved person" to sue to enforce these provisions in federal court. *Id.* § 3613(a)(1)(A). Section 802—the statute's definitions section—defines an "[a]ggrieved person" to include "any person" who "claims to have been injured by a discriminatory housing practice" or "believes that such person will be injured by a dis-

criminatory housing practice that is about to occur." *Id.* § 3602(i). A "[d]iscriminatory housing practice" means "an act that is unlawful" under the statute. *Id.* § 3602(f).

The FHA also provides for enforcement by the Federal Government. Under § 810, an "aggrieved person," or the Secretary of Housing and Urban Development on behalf of such person, may file an administrative "complaint." *Id.* § 3610(a)(1)(A)(i). If the Secretary determines that there is "reasonable cause * * * to believe that a discriminatory housing practice has occurred or is about to occur," the Secretary shall issue a "charge on behalf of the aggrieved person." *Id.* § 3610(g)(2)(A). The "aggrieved person" or the respondent may then elect to have the charge resolved either in a civil action or by an administrative law judge. *Id.* § 3612(a). If either party elects the former, "the Attorney General shall commence and maintain[] a civil action on behalf of the aggrieved person" in federal court. *Id.* § 3612(o)(1). The Attorney General may also file a civil action whenever she has "reasonable cause to believe" that there is a "pattern or practice of resistance to the full enjoyment" of rights under the FHA. *Id.* § 3614(a).

B. The City's Complaint

In 2013, the City of Miami, Florida, sued Wells Fargo & Co. and Wells Fargo Bank, N.A. (together, Wells Fargo) under § 813, alleging violations of §§ 804(b) and 805(a) of the FHA. J.A. 344 (Compl. ¶ 185). The complaint accused Wells Fargo of engaging in discriminatory lending practices, which allegedly included targeting African-Americans and Latinos for predatory loans and refusing to extend them credit on equal terms. J.A. 269 (Compl. ¶ 6).

For example, the City alleges that minorities were "much more likely to receive subprime loans and loans with features that are associated with higher foreclosures," like "prepayment penalties." J.A. 304-305 (Compl. ¶ 81). According to the City, Wells Fargo's alleged practices violated the FHA because they were intentionally discriminatory and had a disparate impact on minorities and "predominantly" minority neighborhoods. J.A. 343-344 (Compl. ¶¶ 183-184).[1]

The City claimed that it had suffered two "financial injuries" as a result of Wells Fargo's alleged conduct. J.A. 334 (Compl. ¶ 153). The first was a reduction in property tax revenues. According to the City, the alleged conduct led to more foreclosures, which led to lower property values, which led to less tax revenue. J.A. 335-338 (Compl. ¶¶ 156-170). The second injury the City allegedly suffered was having to increase municipal spending. The City alleged that the foreclosures led to "a variety of problems, including increased vagrancy, criminal activity, and threats to public health and safety"—which, in turn, required greater spending on municipal services. J.A. 339 (Compl. ¶ 172). The complaint thus sought damages for "lost tax revenues and the need to provide increased municipal services." J.A. 345 (Compl. ¶ 189). It also sought an injunction prohibiting Wells Fargo from engaging in these alleged practices in the future. J.A. 347

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[1]Wells Fargo vigorously disputes that it engaged in any discrimination in violation of the FHA. The issue of whether it did or not, however, is not before this Court. For purposes of this brief, Wells Fargo accepts as true the non-conclusory factual allegations in the complaint.

C. The District Court's Decisions

The District Court dismissed the complaint. Pet. App. 81a-82a. In the court's view, the City had to satisfy "the zone of interests and proximate causation requirements" to have statutory "standing" to sue. *Id.* at 88a. With respect to the former, the court explained that the FHA prohibits discrimination because of race, but that the City had not alleged any injury "affected by a racial interest." *Id.* at 92a (internal quotation marks omitted).[2] Instead, the court found, the City had alleged "merely economic injuries." *Id.* The court thus concluded that the City fell beyond the zone of interests protected by the FHA. *Id.* at 93a.

The District Court also held that the City had not adequately alleged that its injuries were proximately caused by Wells Fargo's alleged conduct. *Id.* at 93a-95a. "Against the backdrop of a historic drop in home prices and a global recession," the court explained, "the decisions and actions of third parties, such as loan services, government entities, competing sellers, and uninterested buyers, thwart the City's ability to trace a foreclosure to Defendants' activity." *Id.* at 94a. Moreover, even if the City could establish that link, it could not "demonstrat[e] that the foreclosures caused the City to be harmed." *Id.*

The City moved for reconsideration, and attached a proposed first amended complaint to its motion. In its proposed amendments, the City asserted "inter-

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[2]The District Court's orders in this case incorporate its orders in the City's suit against Bank of America. Pet. App. 72a, 81a; *see id.* at 74a-80a, 83a-99a.

est[s] in promoting fair housing and securing the benefits of an integrated community." J.A. 416-417 (Proposed First Am. Compl. ¶ 156). The court denied reconsideration, concluding that the City's proposed amendments were futile. Pet. App. 79a n.1. The court explained that "sprinkling in allegations that the City has a generalized interest in racial integration falls far short of alleging facts sufficient to demonstrate that Defendants' lending practices adversely affected the racial diversity or integration of the City." *Id.* Moreover, the court observed, the City's "generalized allegations" did not "appear to be connected in any meaningful way to the purported loss of tax revenue and increase in municipal expenses allegedly caused by Defendants' lending practices." *Id.*

D. The Eleventh Circuit's Decision

The Eleventh Circuit reversed.[3] The court began by considering three "[o]lder Supreme Court cases": *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972); *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979); and *Havens Realty Corp.* v *Coleman*, 455 U.S. 363 (1982). Pet. App. 39a-41a. The Eleventh Circuit read those cases to stand for the proposition that "'[statutory] standing under [the FHA] extends "as broadly as is permitted by Article III of the Constitution."'" *Id.* at 44a (quoting *Gladstone*, 441 U.S. at 98). The Eleventh Circuit then turned to two "recent Supreme Court cases," *id.* at 42a, both decided unanimously: *Thomp-*

[3]The Eleventh Circuit's opinion in this case incorporates its opinion in the City's suit against Bank of America. Pet. App. 12a; *see id.* at 20a-71a.

son v. *North American Stainless, LP*, 562 U.S. 170 (2011), and *Lexmark International, Inc.* v. *Static Control Components, Inc.*, 134 S. Ct. 1377 (2014). The Eleventh Circuit acknowledged that *Thompson* and *Lexmark* "cast some doubt on the broad interpretation of FHA statutory standing in *Trafficante*, *Gladstone*, and *Havens*." Pet. App. 42a. Indeed, the court observed, "the *Thompson* Court's interpretation of Title VII may signal that the Supreme Court is prepared to narrow its interpretation of the FHA in the future." *Id.* at 45a; *see id.* at 15a. Nevertheless, the Eleventh Circuit felt bound by *Trafficante*, *Gladstone*, and *Havens* to conclude that "the term 'aggrieved person' in the FHA sweeps as broadly as allowed under Article III." *Id.* at 16a, 47a. And according to the court, the City had "said enough to establish Article III standing." *Id.* at 37a; *see id.* at 13a-14a.

The Eleventh Circuit also held that the City had said enough to satisfy the proximate-cause requirement. The court agreed that the statute imposed such a requirement. *Id.* at 50a n.8. But it rejected the notion that proximate cause required allegations that the "Bank's actions *directly* harmed the City." *Id.* at 52a (emphasis added). Instead, the court held, "the proper standard * * * is based on foreseeability." *Id.* at 55a. And under that standard, the court concluded that the City's allegations were sufficient: "Although there are several links in th[e] causal chain, none are unforeseeable." *Id.* at 56a; *see id.* at 16a.

The Eleventh Circuit denied rehearing, and this Court granted certiorari.

SUMMARY OF ARGUMENT

The question in this case is not whether the City has adequately pleaded violations of the Fair Housing Act. Rather, the question is whether the City is an appropriate party to seek relief for the violations it asserts.

The FHA authorizes "aggrieved person[s]" to sue. 42 U.S.C. § 3613(a)(1)(A). To be an "aggrieved person," it is not enough to plead the bare minimum to satisfy Article III standing. Rather, a plaintiff has a right to sue only if she (1) falls within the zone of interests protected by the statute, and (2) claims an injury proximately caused by the asserted statutory violation. *See Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 134 S. Ct. 1377, 1388-1391 (2014). The City's complaint fails on both fronts.

I. The FHA imposes a zone-of-interests limitation, and the City falls outside of it. In a unanimous decision five years ago, this Court held that the term "aggrieved" under Title VII does more than reiterate Article III's requirement of an injury in fact. *See Thompson* v. *N. Am. Stainless, LP*, 562 U.S. 170, 175-178 (2011). Instead, it enables suit by a "plaintiff with an interest arguably sought to be protected by the statute, while excluding plaintiffs * * * whose interests are unrelated to the statutory prohibitions in Title VII." *Id.* at 178 (internal quotation marks, brackets, and citation omitted). There is no ground for interpreting the FHA differently than Title VII. The two statutes contain the same text, were enacted against the same presumption that the zone-of-interests limitation applies, and would permit the same absurd consequences if read to allow anyone with Article III standing to sue.

The Eleventh Circuit held to the contrary because it believed it was bound by dicta in three Supreme Court opinions from over three decades ago. In each of those opinions, the Court mentioned that the term "aggrieved" extends as far as Article III permits. *See Trafficante* v. *Metro. Life Ins. Co.*, 409 U.S. 205, 209 (1972); *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 109 (1979); *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 372 (1982). But in each case, the statement was unnecessary to the ultimate holding, because the plaintiffs had claimed injuries that fell comfortably within the FHA's zone of interests. For that reason, this Court has already unanimously dismissed the stray language in those three cases as "dictum"—and "ill-considered" dictum at that. *Thompson*, 562 U.S. at 176.

Under an appropriate zone-of-interests test, the City's complaint fails. Its purported injuries bear no relation to the interests that the FHA protects. As this Court recently explained, "the FHA's central purpose" is to "eradicate discriminatory practices" in the housing sector. *Tex. Dep't of Hous. & Cmty. Affairs* v *Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507, 2521 (2015). That is the purpose of the statutory provisions that form the basis of the City's claims here. And yet, the City has not asserted *any* injury to an interest in non-discrimination. To the contrary, it has pleaded only "financial injuries," claiming a reduction in property tax revenue and an increase in the demand for costly municipal services. J.A. 334-341 (Compl. ¶¶ 153, 156-179). Those financial injuries depend solely on the City's claim that there was an increase in foreclosures within city limits; they do *not* depend on the discriminatory nature of Wells Fargo's alleged conduct. Indeed,

they are indifferent to whether those foreclosures were the result of discrimination at all. Unlike the plaintiffs in *Trafficante*, *Gladstone*, and *Havens*, then, the City does not seek to vindicate the interest in non-discrimination that the FHA protects. For that reason alone, the City's complaint should be dismissed.

II. The complaint fails for another independent reason: Wells Fargo's actions did not proximately cause the injuries the City pleads.

The FHA grants a private right of action to those persons who "have been injured by" or "will be injured by" certain discriminatory housing practices. 42 U.S.C. §§ 3602(i), 3613. Although the statute does not further discuss causation, this Court "generally presume[s] that a statutory cause of action is limited to plaintiffs whose injuries are proximately caused by violations of the statute," unless Congress states otherwise. *Lexmark*, 134 S. Ct. at 1390. Congress did not state otherwise in the FHA.

Proximate cause demands "a sufficiently close connection" between "the harm alleged" and "the conduct the statute prohibits." *Id.* It thus precludes recovery for at least two classes of harms: (1) those harms that are merely *fortuitous*, and (2) those harms that are too *remote* from the statutory violation. Here, the Eleventh Circuit mistakenly reduced proximate cause to a narrow "foreseeability" test and refused to consider the remoteness of the City's claims. Yet this Court has repeatedly assessed the directness or remoteness of statutory injuries, and lifting that restriction in the FHA context would throw open the door to an infinite sequence of possible plaintiffs.

Under well-established proximate-cause principles, by contrast, the City's claims are too remote to survive. The City is not among those immediately harmed by the alleged discrimination. In fact, its claimed injuries are *several steps* removed from any such discrimination—and, indeed, are agnostic as to whether discrimination occurred in the first place. In that sense, the City is no different from the innumerable other individuals and entities that suffered economic losses after the collapse of the American housing market. It cannot use the FHA to seek recovery for a financial injury that was not proximately caused by allegedly discriminatory lending practices.

Because the City cannot plead an injury within the FHA's zone of interests and, alternatively, cannot plead an injury that was proximately caused by any FHA violation, the judgment of the Eleventh Circuit should be reversed.

ARGUMENT

I. THE CITY HAS NO CAUSE OF ACTION BECAUSE ITS ALLEGED INJURIES FALL OUTSIDE THE FHA'S ZONE OF INTERESTS

"Congress is presumed to legislate against the background of the zone-of-interests limitation, which applies unless it is expressly negated." *Lexmark*, 134 S. Ct. at 1388 (internal quotation marks and brackets omitted). That limitation narrows the types of injuries that can be the basis for a suit to those which fall within the zone of interests protected by the statute.

Congress incorporated a zone-of-interests limitation into the FHA when it created a cause of action only for "aggrieved" persons. 42 U.S.C.

§ 3613(a)(1)(A). Because the City's asserted injuries in this case fall well beyond that zone, the City lacks a cause of action under the FHA.

A. The FHA Imposes A Zone-Of-Interests Requirement More Stringent Than The Injury-In-Fact Requirement Of Article III

1. This Court's unanimous opinion in *Thompson* all but decides this case. There, the Court addressed the issue of who could sue under Title VII, another antidiscrimination statute with the same relevant text. Congress enacted Title VII in 1964, four years before it enacted the FHA. Civil Rights Act of 1964, Pub. L. No. 88-352, tit. VII, 78 Stat. 241, 253-266. And in Title VII, Congress authorized suit to enforce the statute by "person[s] claiming to be aggrieved," using the same term—"aggrieved"—that it would later use in the FHA. *Id.*, tit. VII, § 706(e), 78 Stat. at 260 (current version at 42 U.S.C. § 2000e-5(f)(1)).

In an 8-to-0 opinion, the Court in *Thompson* rejected two "extreme," yet different, interpretations of "aggrieved." 562 U.S. at 177. At one extreme was the view that Congress intended the term to encompass only those who are themselves discriminated against. *See id.* The Court saw "no basis in text or prior practice" for that overly narrow view, explaining that "if that is what Congress intended it would more naturally have said 'person claiming to have been discriminated against' rather than 'person claiming to be aggrieved.'" *Id.* "Moreover," the Court continued, "such a reading contradicts the very holding of *Trafficante*," *id.*, a case involving "the 'person aggrieved' provision" of the FHA. *Id.* at 176. *Trafficante* held "that residents of an apartment complex were 'person[s] aggrieved'" under the FHA,

even though the ones discriminated against were prospective tenants, not the residents themselves. *Id.* at 177; *see Trafficante*, 409 U.S. at 209. The Court concluded: "We see no reason why the same phrase in Title VII should be given a narrower meaning." *Thompson*, 562 U.S. at 177.

At the other extreme was the view that "the aggrievement referred to is nothing more than the minimal Article III standing." *Id.* at 175. The Court acknowledged that in *Trafficante*, it had "suggested in dictum that the Title VII aggrievement requirement conferred a right to sue on all who satisfied Article III standing." *Id.* at 176 (citing *Trafficante*, 409 U.S. at 209). But the Court in *Thompson* rejected that "dictum" as "too expansive." *Id.* "Indeed," the Court reasoned, not even the *Trafficante* opinion "adhere[d] to it in expressing its [FHA] holding that residents of an apartment complex could sue the owner for his racial discrimination against prospective tenants." *Id.* (citing *Trafficante*, 409 U.S. at 209). And though "[l]ater opinions," such as *Gladstone*, "reiterate that the term 'aggrieved' in [the FHA] reaches as far as Article III permits," the Court observed that "the holdings of those cases are compatible with" a narrower, "'zone of interests' limitation." *Id.*

Dismissing the "*Trafficante* dictum" as "ill-considered," the Court "decline[d] to follow it." *Id.* "If any person injured in the Article III sense by a Title VII violation could sue," the Court explained, "absurd consequences would follow." *Id.* at 176-177 "For example," the Court reasoned, "a shareholder would be able to sue a company for firing a valuable employee for racially discriminatory reasons, so long as he could show that the value of his stock de-

creased as a consequence." *Id.* at 177 The Court thus concluded that "the term 'aggrieved' must be construed more narrowly than the outer boundaries of Article III." *Id.*

Having rejected both extremes, the Court explained that "there is a common usage of the term 'person aggrieved' that avoids * * * equating it with Article III and yet is fully consistent with [the Court's] application of the term in *Trafficante*." *Id.* Indeed, similar language in the Administrative Procedure Act (APA) has long been construed to mean that "a plaintiff may not sue unless he falls within the 'zone of interests' sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." *Id.* (internal quotation marks omitted). The Court held that "the term 'aggrieved' in Title VII incorporates" that zone-of-interests test, "enabling suit by any plaintiff with an interest arguably sought to be protected by the statute, while excluding plaintiffs who might technically be injured in an Article III sense but whose interests are unrelated to the statutory prohibitions in Title VII." *Id.* at 178 (internal quotation marks, brackets, and citation omitted).

2. There are no grounds for interpreting the FHA differently than Title VII. The FHA contains the same text. The FHA was enacted against the same background presumption of congressional intent. And allowing anyone with an Article III injury to sue under the FHA would lead to the same absurd consequences. Such an "extrem[e]" interpretation of "aggrieved" would be just as "ill-considered" as it is under Title VII. *Id.* at 176, 177.

a. *Same statutory text.* Both the FHA and Title VII use the same statutory term—"aggrieved"—in dealing with the same subject matter—discrimination. *See Inclusive Cmtys.*, 135 S. Ct. at 2521 (observing that both the FHA and Title VII share the same goal of "eradicat[ing] discriminatory practices within a sector of our Nation's economy"). And it is black-letter law that "when Congress uses the same language in two statutes having similar purposes, * * * it is appropriate to presume that Congress intended that text to have the same meaning in both statutes." *Smith* v. *City of Jackson*, 544 U.S. 228, 233 (2005) (plurality opinion); *see also Northcross* v. *Bd. of Educ. of Memphis City Schs.*, 412 U.S. 427, 428 (1973) (per curiam) ("The similarity of language in [the two statutes] is, of course, a strong indication that the two statutes should be interpreted *pari passu*."); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 252 (2012) ("Statutes *in pari materia* are to be interpreted together, as though they were one law.").

This Court has consistently applied this principle in cases involving the FHA and Title VII. For example, in a case involving the FHA just two Terms ago, the Court looked to "cases interpreting Title VII" for "essential background and instruction." *Inclusive Cmtys.*, 135 S. Ct. at 2518. The Court then relied on textual similarities between the two statutes in concluding that both provide for disparate-impact claims. *Id.* at 2519; *see also Buckhannon Bd. & Care Home, Inc.* v. *W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 603 n.4 (2001) (interpreting the two statutes' fee-shifting provisions "consistently"). Even more relevant here, the Court has applied this principle to the very term at issue—"aggrieved." In

considering the meaning of "aggrieved" in the FHA, the Court in *Trafficante* "relied upon, and cited with approval, a Third Circuit opinion involving Title VII." *Thompson*, 562 U.S. at 176 (citing *Trafficante*, 409 U.S. at 209). And in considering the meaning of "aggrieved" in Title VII, the Court in *Thompson* relied upon, and cited with approval, *Trafficante*'s "holding" under the FHA. *Id.* at 177.

The principle applies with equal force here. When Congress enacted Title VII, it intended the term "aggrieved" to be "construed more narrowly than the outer boundaries of Article III." *Id.* When Congress used the same term in the FHA, it intended it to have the same meaning. Just as there is "no reason" why that term in Title VII "should be given a narrower meaning," there is no reason why that term in the FHA should be given a broader one. *Id.*

b. *Same presumption of congressional intent.* That conclusion is reinforced by the presumption that "a statutory cause of action extends only to plaintiffs whose interests fall within the zone of interests protected by the law invoked." *Lexmark*, 134 S. Ct. at 1388 (internal quotation marks omitted). As a unanimous Court recognized in *Lexmark*, the zone-of-interests limitation has deep "roots" in English common law. *Id.* at 1389 n.5 (citing W Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 36, at 229-230 (5th ed. 1984), and *Gorris* v. *Scott*, [1874] 9 LR Exch. 125 (Eng.)). And because Congress is presumed to legislate against the background of the common law, *see id.*, the zone-of-interests limitation "applies to *all* statutorily created causes of action * * *, unless it is expressly negated." *Id.* at 1388 (emphasis added) (internal quotation marks omitted); *see also Astoria Fed. Sav. & Loan Ass'n* v

Solimino, 501 U.S. 104, 108 (1991) ("Congress is understood to legislate against a background of common-law adjudicatory principles.").

Nothing expressly negates the zone-of-interests limitation in the FHA. Quite the opposite. The FHA uses the term "aggrieved." 42 U.S.C. § 3613(a)(1)(A). As the Court explained in *Thompson*, the "common usage" of that term supports application of the zone-of-interests limitation. 562 U.S. at 177 Examples of where the term is so used include not only Title VII but also the APA. *Id.* at 177-178. Indeed, the term "aggrieved" has "a long history in federal administrative law," and has for decades been construed in the APA to incorporate a zone-of-interests test. *Dir., Office of Workers' Comp. Programs* v *Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 126-127 (1995); *see Ass'n of Data Processing Serv. Orgs., Inc.* v. *Camp*, 397 U.S. 150, 153 (1970).

Moreover, the FHA defines "aggrieved person" to include "any person" who "claims to have been injured," or "believes [he] will be injured," "by a discriminatory housing practice." 42 U.S.C. § 3602(i). In *Lexmark*, the Court construed similar language in the Lanham Act—authorizing suit by "any person who believes that he or she is likely to be damaged," 15 U.S.C. § 1125(a)(1)—to contain a zone-of-interests limitation. 134 S. Ct. at 1388-1389. Far from negating the limitation, the text of the FHA supports it.

That text stands in stark contrast with that of the Endangered Species Act (ESA), which provides simply that "any person may commence a civil suit." 16 U.S.C. § 1540(g)(1). In *Bennett* v. *Spear*, 520 U.S. 154 (1997), the Court described that language as "an authorization of remarkable breadth when compared

with the language Congress ordinarily uses." *Id.* at 164-165. The ESA lacks any "restrictive" terms like "adversely affected" or "injured"; "any person" is not qualified by such words. *Id.* at 165. Taking "any person" at "face value," then, the Court held that the ESA "negates the zone-of-interests test." *Id.* at 164, 165. The FHA, however, contains the very "restrictive" language the ESA lacks. Congress has not expressly negated the zone-of-interests limitation in the FHA.

c. *Same absurd consequences.* Finally, "interpretations of a statute which would produce absurd results are to be avoided." *Griffin* v. *Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). The Court in *Thompson* explained that "[i]f any person injured in the Article III sense by a Title VII violation could sue, absurd consequences would follow." 562 U.S. at 176-177. The same is true under the FHA. The Court in *Thompson* thought it would be "absurd" to allow a shareholder "to sue a company for firing a valuable employee for racially discriminatory reasons, so long as he could show that the value of his stock decreased as a consequence." *Id.* at 177. But allowing anyone with Article III standing to sue would produce a similar absurdity under the FHA: A shareholder could sue Wells Fargo for engaging in allegedly discriminatory practices, "so long as he could show that the value of his stock decreased as a consequence." *Id.*

That is not all. The same shareholder could also file a complaint with the Secretary, and if the Secretary found "reasonable cause" to believe there was discrimination, the shareholder could require the Attorney General to file a civil action on his behalf. 42 U.S.C. §§ 3610(a), (g), 3612(a), (*o*). What is more,

that shareholder would also have the statutory right to intervene in other enforcement proceedings before the Secretary and civil actions brought by the Attorney General. *See id.* §§ 3612(c), (*o*)(2), 3614(e). Such participation would serve only to shift attention away from those whose interests the statute was truly meant to protect, further exacerbating the absurdity of an overly expansive reading of "aggrieved."

And shareholders are only one example. Others technically injured in the Article III sense could sue and intervene, too. In the aftermath of foreclosures, utility companies could sue under the FHA for loss of revenue. Local businesses, from bowling alleys to coffee shops to dry cleaners to restaurants, could sue for loss of customers. Landscapers, plumbers, and housekeepers could sue for loss of work. And so on. The list would include anyone, like a shareholder, who could assert some economic harm, no matter how "unrelated to the statutory prohibitions" in the FHA. *Thompson*, 562 U.S. at 178.

Congress could not have possibly intended the term "aggrieved" to be construed so broadly. What is true of Title VII is also true of the FHA: "[T]he term 'aggrieved' must be construed more narrowly than the outer boundaries of Article III." *Id.* at 177

3. It is true that prior opinions of this Court have stated that the term "aggrieved" in the FHA extends as far as Article III permits. Pet. App. 39a-41a. But those statements should not stand in the way of the best interpretation of the FHA.

a. First and foremost, the Court itself has classified those statements as dicta. *See Thompson*, 562 U.S. at 176-177 (contrasting *Trafficante*'s "dictum"

with its "very holding"); *id.* at 176 (emphasizing that "the holdings of those cases are compatible with the 'zone of interests' limitation"). And the opinions themselves bear out that description.

Start with *Trafficante*, where the dictum originated. In *Trafficante*, residents of an apartment complex filed a complaint with the Secretary as "person[s] aggrieved" under former § 810 of the FHA, claiming that the owner of the complex had discriminated against minorities in the rental of apartments. 409 U.S. at 206-208.[4] The Court noted that the Third Circuit had construed similar language in Title VII as "'defin[ing] standing as broadly as is permitted by Article III.'" *Id.* at 209 (quoting *Hackett* v. *McGuire Bros.*, 445 F.2d 442, 446 (3d Cir. 1971)). But as the Court explained in *Thompson*, "the *Trafficante* opinion did not adhere to [that dictum] in expressing its [FHA] holding that residents of an apartment complex could sue." 562 U.S. at 176. Rather, the opinion said: "With respect to suits brought under [the FHA], we reach the same conclusion, *insofar as tenants of the same housing unit that is charged with discrimination are concerned.*" *Trafficante*, 409 U.S. at 209 (emphasis added) (foot-

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[4]Former § 810 of the FHA authorized a "person aggrieved" to file a complaint with the Secretary, and then to "commence a civil action" in federal court if the Secretary was unable to obtain "voluntary compliance" with the statute. Pub. L. No. 90-284, tit. VIII, § 810(a), (d), 82 Stat. 73, 85-86 (1968). The section also defined "person aggrieved" as "[a]ny person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice." *Id.*, tit. VIII, § 810(a), 82 Stat. at 85.

note omitted); *see also id.* at 212 (recognizing the "standing" of "all *in the same housing unit* who are injured by racial discrimination in the management of those facilities" (emphasis added)). As *Trafficante* noted, such tenants have an interest in enjoying the "important benefits from interracial associations," *id.* at 210, including "living in an integrated community," *id.* at 208. That interest is no doubt one the FHA was meant to protect, making *Trafficante*'s holding "fully consistent" with the zone-of-interests limitation. *See Thompson*, 562 U.S. at 177.

To be sure, "[l]ater opinions" have "reiterate[d]" the "*Trafficante* dictum" about Article III. *Id.* at 176. But those reiterations are dicta, too. As the Court said in *Thompson*, the "holdings" of those later opinions are "compatible with the 'zone of interests' limitation" as well. *Id.*

In *Gladstone*, a village and some residents sued in federal court under former § 812 of the FHA, claiming that realtors "were engaging in racial 'steering,' *i.e.*, directing prospective home buyers interested in equivalent properties to different areas according to their race." 441 U.S. at 93-94.[5] The plaintiffs' interests were "similar to" those in *Trafficante*: The residents asserted an interest in "living in an integrated society"; the village, in maintaining "an

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[5]Former § 812 authorized the commencement of a civil action in the first instance, without having previously pursued administrative relief with the Secretary. Pub. L. No. 90-284, tit. VIII, § 812(a), 82 Stat. at 88. Unlike former § 810, § 812 did not use the term "person aggrieved." Instead, § 812 spoke in the passive voice: "The rights granted by sections 803, 804, 805, and 806 may be enforced by civil actions in appropriate United States district courts * * * " *Id.*

integrated neighborhood." *Id.* at 110-111. Thus, although *Gladstone* reiterated that "[s]tanding" under the FHA extends as far as Article III, *id.* at 109, that statement was no more necessary than it was in *Thompson*; the plaintiffs' interests fell well within the statutory zone of interests anyway. *See id.* at 100 n.6 (noting that "nonconstitutional limitations on standing," such as the zone-of-interests test, are "to be applied in appropriate circumstances"). *Gladstone* went beyond *Trafficante* in only one major respect: It clarified that the same set of "aggrieved" persons who could pursue *administrative* remedies under former § 810 could also pursue *judicial* remedies under former § 812. *See id.* at 102-106.

Havens followed a similar script. The plaintiffs included a nonprofit organization and so-called "testers"—"individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful steering practices." *Havens*, 455 U.S. at 367-368, 373. The plaintiffs sued in federal court under former § 812, claiming that the owner of two apartment complexes was falsely informing minorities that there were no apartments available. *Id.* at 368. *Havens* reiterated that "Congress intended standing under § 812 to extend to the full limits of Art. III." *Id.* at 372 (internal quotation marks omitted). But just as in *Trafficante* and *Gladstone*, that statement was dictum. One of the plaintiffs, a black tester, was herself discriminated against in the dissemination of housing information: She was given false information because of her race. *Id.* at 374, 375. And the nonprofit organization, which hired the tester, had a "noneconomic interest in encouraging open housing" that was "perceptibly

impaired" when the organization "devote[d] significant resources to identify and counteract" the owner's discriminatory practices. *Id.* at 368, 379 & n.20 (internal quotation marks omitted). Because the interests of these plaintiffs, like those in *Trafficante* and *Gladstone*, were in fact related to the FHA's statutory prohibitions, *Havens*' holding that they could sue is compatible with the zone-of-interests test.

That leaves *Bennett*, in which the Court again repeated *Trafficante*'s dictum that "standing was expanded to the full extent permitted under Article III" by the FHA. *Bennett*, 520 U.S. at 165. *Bennett*, however, was a case about the ESA, not the FHA, so whatever that opinion said about the FHA was merely dictum. *Id.* at 164. Moreover, *Bennett* acknowledged that the text of the ESA is different from that of the FHA, so its holding cannot be controlling here. *See id.* at 166; *supra* pp. 17-18 (discussing the differences between the FHA and the ESA).

In short, the Court has said that "standing" under the FHA extends as far as Article III only in dicta. Dicta do not bind this Court; only holdings are entitled to *stare decisis* effect. *See 14 Penn Plaza LLC* v. *Pyett*, 556 U.S. 247, 264 n.8 (2009) (explaining that there were no "*stare decisis* concerns" where the Court's opinion did "not contradict the holding" of an earlier decision). And the dicta here were not even accompanied by any reasoning; part of a single paragraph in *Trafficante* was simply repeated out of context and without examination. Accordingly, the Court in this case should do precisely what it did in *Thompson*: dismiss as "ill-considered" the "*Trafficante* dictum" and its later "reiterat[ions]," and hold that

"the term 'aggrieved' must be construed more narrowly than the outer boundaries of Article III." *Thompson*, 562 U.S. at 176-177.[6]

b. Nor can it be said that Congress ratified the *Trafficante* dictum or its later reiterations in amending the FHA in 1988. To be sure, Congress amended the statute without materially altering the definition of "aggrieved." *See* Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619, 1619-1636. And in doing so, Congress presumably accepted the *holdings* of this Court's prior opinions in *Trafficante*, *Gladstone*, and *Havens*. *See Inclusive Cmtys.*, 135 S. Ct. at 2520 (concluding that "Congress accepted and ratified the unanimous *holdings* of the Courts of Appeals finding disparate-impact liability" (emphasis added)). After all, those holdings represented a "*settled* judicial construction" of the FHA. *Jama* v. *Immigration & Customs Enforcement*, 543 U.S. 335, 351 (2005) (emphasis added) (internal quotation marks omitted); Scalia & Garner, *supra*, at 325 (explaining that application of the "prior-

[6]If this Court disagrees and thinks those older statements represent holdings, those holdings should be overruled. There are special justifications for doing so. First, overruling those statements would "achieve a uniform interpretation of similar statutory language," bringing the Court's interpretation of the FHA in line with its interpretation of Title VII and the APA. *Rodriguez de Quijas* v. *Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989). Leaving those statements in place, by contrast, would make nonsense of the *corpus juris*. Second, overruling those statements would not affect the outcomes in *Trafficante*, *Gladstone*, *Havens*, or *Bennett*. As explained, the outcomes in those cases are compatible with the zone-of-interests limitation. This case thus differs from the typical situation, where overruling a holding would also entail disavowing the outcome of a prior decision.

construction canon" depends on whether a prior construction can "justifiably" be regarded as "settled law").

The Court should *not* presume, however, that Congress also ratified the *dicta* of those prior opinions. "Dictum settles nothing, even in the court that utters it." *Jama*, 543 U.S. at 351 n.12. And it would stretch a legal fiction too far to believe that each time Congress amends a statute, it intends to silently embrace everything this Court has uttered about the terms Congress continues to use. This Court should thus reject the notion that Congress ratified the *Trafficante* dictum or any later reiteration of it when it amended the FHA in 1988. *See id.* (concluding that "dicta" in prior judicial opinions did "not lend any additional weight" to the argument that Congress had "ratified" a particular construction of a statute).

Indeed, the legislative history confirms that Congress meant to ratify the holdings, not the dicta, of those prior opinions. The relevant House Report refers explicitly to the "broad *holdings*" of *Gladstone* and *Havens*. H.R. Rep. No. 100-711, at 23 (1988) (emphasis added). And the House Report even specifies what those "holdings" are: In *Gladstone*, "the Supreme Court affirmed that standing requirements for judicial and administrative review are identical," while in *Havens*, "the Court held that 'testers' have standing to sue." *Id.* Those were the holdings that Congress meant to "reaffirm," and the 1988 amendments did just that. *Id.* The amendments moved the definition of "aggrieved person" into the FHA's definitions section, § 802. Pub. L. No. 100-430, sec. 5(b), 102 Stat. at 1619-1620 (codified at 42 U.S.C. § 3602). By sticking with "language

similar to that contained in [former] Section 810" as its "definition" of "aggrieved person," the amendments reaffirmed *Havens*' holding that "'testers' have standing to sue." H.R. Rep. No. 100-711, at 23. And by using that defined term consistently throughout the statute—including in new § 813, the analogue to former § 812—the amendments reaffirmed *Gladstone*'s holding that "standing requirements for judicial and administrative review are identical." *Id.*

Conspicuously absent from the 95-page House Report is any mention of dicta regarding the outer boundaries of the term "aggrieved." Given that the House Report went out of its way to discuss the actual holdings of *Gladstone* and *Havens*, the fact that it did not even mention those dicta only confirms that Congress did not intend to ratify them. Indeed, if Congress ratified anything beyond the Court's prior FHA holdings, it is this Court's longstanding construction of the term "aggrieved" under the APA, not loose dicta in *Trafficante* and later cases. *See Data Processing*, 397 U.S. at 153; H.R. Rep. No. 100-711, at 36 (explaining that the "rights of parties" under new § 812(c) are "those provided under the Administrative Procedure Act"); *Bragdon* v. *Abbott*, 524 U.S. 624, 645 (1988) ("When * * * judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its * * * judicial interpretations as well.").

In any event, the ratification canon is just one canon, which must yield to "other sound rules of interpretation." Scalia & Garner, *supra*, at 324. Here, all of the other rules of interpretation point in the same

direction: that "aggrieved" must be construed more narrowly than Article III. And one of those rules—the presumption that Congress legislates against the background of the zone-of-interests limitation—applies unless it is "*expressly* negated." *Lexmark*, 134 S. Ct. at 1388 (emphasis added) (internal quotation marks and brackets omitted). The ratification canon—a canon about what Congress might have "*impliedly* approved"—cannot overcome that presumption. *Jama*, 543 U.S. at 351 (emphasis added) (internal quotation marks omitted). Accordingly, this Court should hold that the term "aggrieved" in the FHA incorporates a zone-of-interests limitation.

B. The City's Alleged Injuries Fall Beyond The FHA's Zone Of Interests

Under the zone-of-interests test, "a plaintiff may not sue unless he falls within the zone of interests sought to be protected by the statutory provision whose violation forms the legal basis for his complaint." *Thompson*, 562 U.S. at 177 (internal quotation marks omitted). "[I]f the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute," "it cannot reasonably be assumed that Congress intended to permit the suit." *Id.* at 178 (internal quotation marks omitted).

The zone-of-interests test has two steps. First, the Court "discern[s] the interests 'arguably to be protected' by the statutory provision at issue." *Nat'l Credit Union Admin.* v. *First Nat'l Bank & Trust Co.*, 522 U.S. 479, 492 (1998) (quoting *Data Processing*, 397 U.S. at 153). Second, the Court "inquire[s] whether the plaintiff's interests affected by [the alleged statutory violation] are among them." *Id.*

1. At the first step, discerning the interests sought to be protected by the statutory provisions at issue in this case "requires no guesswork." *Lexmark*, 134 S. Ct. at 1389. As this Court has said, "the FHA's central purpose" is to "eradicate discriminatory practices within a sector of our Nation's economy." *Inclusive Cmtys.*, 135 S. Ct. at 2521 (citing 42 U.S.C. § 3601 and H.R. Rep. No. 100-711, at 15). And §§ 804(b) and 805(a) of the FHA—the provisions "whose violation forms the legal basis" for the City's complaint—are integral to that purpose. *Thompson*, 562 U.S. at 177 (internal quotation marks omitted); *see* J.A. 344 (Compl. ¶ 185). Section 804(b) makes it unlawful "[t]o *discriminate* against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, *because of race, color, religion, sex, familial status, or national origin*." 42 U.S.C. § 3604(b) (emphases added). And § 805(a) makes it unlawful "to *discriminate* against any person" in a residential real estate-related transaction "*because of race, color, religion, sex, handicap, familial status, or national origin*." *Id.* § 3605(a) (emphases added).

In short, §§ 804(b) and 805(a) are *non-discrimination* provisions. The interest they seek to protect is an interest against discrimination on the basis of race, national origin, and other enumerated categories. Accordingly, "the plaintiff must establish that the injury he complains of (*his* aggrievement, or the adverse effect *upon him*)" is an injury to *his* interest in non-discrimination. *Lujan* v. *Nat'l Wildlife Fed'n*, 497 U.S. 871, 883 (1990). That does not mean that the plaintiff himself must have been discriminated against by the defendant. But it does mean that the plaintiff's injury must, at the very

least, depend on the discriminatory nature of the defendant's conduct. Otherwise, the plaintiff's injury would be unrelated to the statutory prohibition on discrimination.

2. The question, then, is whether the City has pleaded an injury to an interest in non-discrimination. It has not.

The only injuries pleaded in the City's complaint are what the City describes as "*financial* injuries." J.A. 334 (Compl. ¶ 153) (emphasis added). First, the City claims that it "has been injured by a reduction in property tax revenues from foreclosures." J.A. 334 (capitalization and boldface omitted). And second, the City claims that it "is injured because it provided and still must provide costly municipal services for foreclosure properties." J.A. 338 (capitalization and boldface omitted).

Do these financial injuries depend on the discriminatory nature of Wells Fargo's alleged conduct? No. What allegedly injured the City were the foreclosures. And under the City's own theory, it would have been harmed by those foreclosures all the same, regardless of the race, national origin, or other protected status of the people whose homes were foreclosed upon. From the perspective of the City's pocketbook, whether those people were discriminated against does not matter. If the same homes had been subject to foreclosure but their owners had *not* suffered any discrimination, the City would have faced the same alleged reduction in revenues and increase in spending. Thus, the City has pleaded no injury to an interest in non-discrimination.

To illustrate, consider what the City's financial injuries would have been if Wells Fargo had em-

ployed the same alleged predatory loan practices, but *without* discriminating. That is, imagine what would have happened if, instead of allegedly targeting African-Americans and Latinos, Wells Fargo had issued subprime loans as extensively to people of *all* races—thereby increasing the number of subprime loans issued to whites, Asians, and others. On the City's own theory, the result would have been even more foreclosures, and thus even greater economic harm to the City. The fact that the City's financial injuries could have been *worse* in the absence of discrimination proves that the City lacks an interest in non-discrimination itself.

Indeed, the City is no different from the hypothetical shareholder in *Thompson*, who claims that "the value of his stock decreased" because the company "fir[ed] a valuable employee for racially discriminatory reasons." 562 U.S. at 177 The shareholder is injured because the company terminated a valuable employee. But the shareholder would be injured, regardless of whether the termination was based on race; what matters to the shareholder is that the employee was economically valuable, not that the employee was discriminated against. Similarly here, the City is allegedly injured because there were foreclosures. But the City would have suffered the same alleged injuries, regardless of whether the foreclosures were the result of discrimination; what matters to the City is that there were foreclosures, not that they happened to people of a certain race or national origin. Like the hypothetical shareholder in *Thompson*, the City lacks an interest in non-discrimination and thus falls beyond the statute's zone of interests. *See Air Courier Conference of Am.* v. *Am. Postal Workers Union*, 498 U.S. 517, 519

(1991) (holding that postal employees were not within the zone of interests of statutes governing the scope of the Postal Service's monopoly); *Block* v. *Cmty. Nutrition Inst.*, 467 U.S. 340, 341 (1984) (holding that individual consumers of dairy products could not sue to challenge milk market orders issued under the Agricultural Marketing Agreement Act).

By contrast, all of the plaintiffs in *Trafficante*, *Gladstone*, and *Havens* were within the FHA's zone of interests because they claimed injury to an interest in non-discrimination. In each case, the plaintiffs' injuries depended on the discriminatory nature of the defendants' conduct—*i.e.*, the fact that the challenged practice was deployed based on membership in a protected class.

Residents in *Trafficante* and in *Gladstone* claimed the loss of the "benefits of living in an integrated" community. *Trafficante*, 409 U.S. at 208; *Gladstone*, 441 U.S. at 111. That injury depended on the discriminatory nature of the challenged practices. Thus, in *Trafficante*, if the alleged rental practices—such as manipulating the waiting list for apartments—had not been deployed against applicants *based on their race*, then the apartment buildings would have been less segregated. *See* 409 U.S. at 207-208. By the same token, in *Gladstone*, if home seekers had not been guided toward particular neighborhoods *based on their race*, then the community would have remained integrated. *See* 441 U.S. at 95. Accordingly, the residents had an interest in non-discrimination, which was injured when the defendants in each case "manipulated" the "racial composition" of the community. *Id.* at 114; *see also Trafficante*, 409 U.S. at 207-208.

The village in *Gladstone* similarly alleged that the realtors' racial steering was "affecting the village's racial composition, replacing what [was] an integrated neighborhood with a segregated one." 441 U.S. at 110. That injury depended on the discriminatory nature of the practice as well—namely, the fact that blacks were being steered toward the neighborhood while whites were being steered away. *Id.* The village thus had an interest in non-discrimination, which was injured when the realtors engaged in racial steering.

The plaintiffs in *Havens* claimed injury to the same interest. The black tester suffered injury when she was denied truthful housing information because of her race; as a victim of the defendants' steering practices, she sued to vindicate her own interest in non-discrimination. 455 U.S. at 374. And when the nonprofit organization "devote[d] significant resources to identify and counteract" those same "racially discriminatory" practices, it, too, suffered injury. *Id.* at 379 (internal quotation marks omitted). Its injury likewise depended on the fact of discrimination; indeed, it was a response to it. The organization thus had an interest in non-discrimination—namely, "encouraging open housing"—which was "perceptibly impaired" by the defendants' steering practices. *Id.* at 379 & n.20.

The City fundamentally differs from the plaintiffs in these other cases: Unlike them, its asserted injury does *not* depend on the discriminatory nature of the challenged conduct. Instead, the City has pleaded purely financial injuries, which are indifferent to the race, national origin, or other protected status of the people whose homes were foreclosed upon. The City's injuries are thus unrelated to the interest in

non-discrimination that §§ 804(b) and 805(a) were meant to protect. For this reason alone, the City's complaint should be dismissed.

3. In seeking reconsideration of the District Court's dismissal of the complaint, the City proposed an amended complaint with additional allegations about the City's "interest[s]." J.A. 416 (Proposed First Am. Compl. ¶ 156). To the extent the Court wishes to consider those proposed amendments, it should conclude, as the District Court did, that they are futile. Pet. App. 79a n.1; *see id.* at 72a-73a.

The City's proposed amendments include new allegations that Wells Fargo's lending practices "frustrate[]" the City's "interest[s] in promoting fair housing and securing the benefits of an integrated community." J.A. 416-417 (Proposed First Am. Compl. ¶ 156). To be sure, those are "among the *sorts* of interests" the FHA was meant to protect. *Nat'l Wildlife Fed'n*, 497 U.S. at 886. But the City's proposed amendments fail to plausibly suggest that "those interests *of* [*the City*] were actually affected." *Id.*; *see also id.* at 883 (requiring the plaintiff to "establish that the injury he complains of (*his* aggrievement, or the adverse effect *upon him*) falls within the 'zone of interests'").

Take the City's allegation that it has an "interest in promoting fair housing." J.A. 416-417 (Proposed First Am. Compl. ¶ 156). According to the City, Wells Fargo's alleged conduct "frustrates" and "interfere[s] with" that interest. *Id.* But that is merely a "conclusory" assertion, "devoid of 'further factual enhancement.'" *Ashcroft* v. *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 557 (2007)); *see also id.* at 679 (explaining that

pleadings that "are no more than conclusions[] are not entitled to the assumption of truth"). Without allegations of concrete harm, promoting fair housing amounts to nothing more than an "abstract social interest[]," insufficient to establish Article III injury, let alone bring the City within the FHA's zone of interests. *Havens*, 455 U.S. at 379; *see also Sierra Club* v. *Morton*, 405 U.S. 727, 739 (1972) ("[A] mere 'interest in a problem' * * * is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' within the meaning of the APA."). The City's proposed amended complaint does not adequately plead that the City's interest in promoting fair housing was "actually affected." *Nat'l Wildlife Fed'n*, 497 U.S. at 886.

The same is true of the City's other newly asserted interest in "securing the benefits of an integrated community" J.A. 416-417 (Proposed First Am. Compl. ¶ 156). The City claims that Wells Fargo's alleged conduct "frustrates" this interest, too. *Id.* But unlike the plaintiffs in racial steering cases like *Trafficante*, *Gladstone*, and *Havens*, the City never explains how Wells Fargo's lending threatened to change the racial composition of Miami or any of its neighborhoods. Indeed, the neighborhoods allegedly affected by foreclosures were hardly integrated to begin with; according to the City, they were "predominantly minority neighborhoods." J.A. 429 (Proposed First Am. Compl. ¶ 192). And there is no allegation regarding where minorities affected by the foreclosures moved, or who may have subsequently occupied their homes. The City's allegation that Wells Fargo deprived "African-American and Latino neighborhoods" of the benefits of integration is thus im-

plausible. J.A. 410 (Proposed First Am. Compl. ¶ 141).

Moreover, despite "sprinkling in" new allegations about its interests, Pet. App. 79a n.1, the City has not altered the nature of the relief it seeks: damages for "lost tax revenues and the need to provide increased municipal services." J.A. 429 (Proposed Am. Compl. ¶ 192). Those requested damages have no connection whatsoever to the City's newly asserted interests in "promoting fair housing and securing the benefits of an integrated community." J.A. 416-417 (Proposed First Am. Compl. ¶ 156). The fact that the City does not even seek any damages relating to those interests only confirms that those interests were not actually injured. And even if they were, the City would not be able to recover the damages it seeks, which have nothing to do with those interests at all.

Because the City cannot plead an injury to an interest in non-discrimination, its complaint should be dismissed and its proposed amendments rejected.

II. THE CITY HAS NO CAUSE OF ACTION BECAUSE THE ALLEGED STATUTORY VIOLATIONS DID NOT PROXIMATELY CAUSE ITS INJURIES

Even assuming that the City's asserted financial injuries fall within the FHA's zone of interests, the City lacks a cause of action because any such injuries were not proximately caused by a violation of the FHA.

This Court "generally presume[s] that a statutory cause of action is limited to plaintiffs whose injuries are proximately caused by violations of the statute." *Lexmark*, 134 S. Ct. at 1390. In its recent unani-

mous opinion in *Lexmark*, the Court explained that the hallmark of proximate cause is "a sufficiently close connection" between "the harm alleged" and "the conduct the statute prohibits." *Id.* That "sufficiently close connection" encompasses concepts like foreseeability and directness—both of which bar recovery for too-attenuated harms.

The City's suit here falls well beyond the bounds of proximate cause. The alleged harm is several steps removed from the purported FHA violations: Wells Fargo allegedly engaged in discriminatory lending practices; which eventually led to more defaults on those loans; which led to an increase in foreclosures in minority neighborhoods; which led to reduced property values of the foreclosed homes, or reduced property values of neighboring homes; which led to decreased property tax revenue for the City. J.A. 269-272, 335-338 (Compl. ¶¶ 6-12, 156-170). Or, alternatively: Wells Fargo allegedly engaged in discriminatory lending practices; which eventually led to more defaults on those loans; which led to an increase in foreclosures in minority neighborhoods; which led to homes remaining vacant; which led to "increased vagrancy, criminal activity, and threats to public health and safety"; which led to an uptick in demand for municipal services; which led to increased City spending. J.A. 339-341 (Compl. ¶¶ 171-179). This is precisely the type of suit that proximate cause was meant to bar.

A. The FHA Requires Proximate Cause

The Eleventh Circuit in this case held that the FHA incorporates a proximate-cause requirement. Pet. App. 16a, 48a. Every other court of appeals to consider the question has reached the same conclu-

sion. *See Pac. Shores Props., LLC* v. *City of Newport Beach*, 730 F.3d 1142, 1167-1168 (9th Cir. 2013); *Samaritan Inns, Inc.* v. *Dist. of Columbia*, 114 F.3d 1227, 1234 (D.C. Cir. 1997). And at the certiorari stage in this Court, the City did not dispute that proximate cause is required. *See Alabama* v. *Shelton*, 535 U.S. 654, 660 n.3 (2002) (declining to consider an argument for affirmance that was not made in the respondent's brief in opposition to certiorari).

Nor could it. As noted, the FHA grants a cause of action to "aggrieved person[s]," 42 U.S.C. § 3613(a)(1)(A)—persons who claim that they "have been injured by" or "will be injured by" discriminatory housing practices. *Id.* § 3602(i). Although the text of the statute says little about the type of causation required, the FHA "is, in effect, a tort action." *Meyer* v. *Holley*, 537 U.S. 280, 285 (2003); *see also Curtis* v. *Loether*, 415 U.S. 189, 195 (1974) ("A damages action under the statute sounds basically in tort"). And as all first-year law students learn, proximate cause is an integral element of a tort claim. *See* 1 Dan B. Dobbs et al., *The Law of Torts* § 198, at 680 (2d ed. 2011). Indeed, the default common-law rule "in all cases of loss" is that courts will "attribute it to the proximate cause, and not to any remote cause." *Lexmark*, 134 S. Ct. at 1390 (quoting *Waters* v. *Merchants' Louisville Ins. Co.*, 36 U.S. (11 Pet.) 213, 223 (1837)).

This Court presumes that Congress legislates against the background of that "common-law rule and does not mean to displace it *sub silentio*." *Id.* Accordingly, proximate cause is "built into" a variety of federal causes of action, even where the text of the statute does not expressly mention it. *Paroline* v. *United States*, 134 S. Ct. 1710, 1720 (2014); *see, e.g.*,

Lexmark, 134 S. Ct. at 1390-1391 (Lanham Act); *Dura Pharms., Inc.* v. *Broudo*, 544 U.S. 336, 346 (2005) (Securities Exchange Act); *Holmes* v. *Sec. Inv'r Prot. Corp.*, 503 U.S. 258, 268 (1992) (Racketeer Influenced and Corrupt Organizations Act (RICO)); *Associated Gen. Contractors of Cal., Inc.* v *Cal. State Council of Carpenters*, 459 U.S. 519, 535-536 (1983) (Clayton Antitrust Act). The FHA is no different. It was enacted against the same background presumption. Thus, like other federal statutes, it incorporates traditional notions of proximate cause, and nothing in the text of the FHA suggests otherwise.

B. Proximate Cause Requires A Direct Relationship Between The Defendant's Conduct And The Plaintiff's Injury

1. Proximate cause demands "a sufficiently close connection" between the statutory violation and the injury alleged. *Lexmark*, 134 S. Ct. at 1390. Tort law has long identified two critical aspects of that close connection: (1) whether the harm itself is *too fortuitous*, and (2) whether the plaintiff alleging the harm is *too far removed* from the violation. *See Paroline*, 134 S. Ct. at 1719 ("Proximate cause is often explicated in terms of foreseeability or the scope of the risk created by the predicate conduct."); Dobbs et al., *supra*, § 198, at 682-683 ("The most general and pervasive approach to scope of liability or proximate cause holds that a negligent defendant is liable for all the general kinds of harms he foreseeably risked by his negligent conduct and to the class of persons he put at risk by that conduct.").

The first aspect corresponds to the concept of *foreseeability*. In *Paroline*, for example, the Court explained that an immediate victim of child abuse

could not recover for damages from "a car accident on the way to her therapist's office." 134 S. Ct. at 1721. Such an unpredictable harm would be "akin to mere fortuity." *Id.*; *see also CSX Transp., Inc.* v. *McBride*, 564 U.S. 685, 718 (2011) (Roberts, C.J., dissenting) (hypothesizing, as an example of an unforeseeable injury, a railroad employee who spills hot coffee on his bare arm and burns himself after having removed his jacket to fix a negligently maintained boiler). And when the harm is too fortuitous—*i.e.*, when the harm is not reasonably foreseeable—"the causal link between conduct and result" is too "attenuated" to satisfy the proximate-cause requirement. *Paroline*, 134 S. Ct. at 1719.

The second aspect corresponds to the concept of *directness*. It evaluates the nature and number of causal links between the defendant's conduct and the plaintiff's harm. *See Lexmark*, 134 S. Ct. at 1390 ("[T]he proximate cause requirement generally bars suits for alleged harm that is 'too remote' from the defendant's unlawful conduct."); *Hemi Grp., LLC* v. *City of New York*, 559 U.S. 1, 12 (2010) (focusing "on the directness of the relationship between the conduct and the harm"); *Holmes*, 503 U.S. at 268 (noting the "demand for some direct relation between the injury asserted and the injurious conduct alleged"); *Associated Gen. Contractors*, 459 U.S. at 540 (assessing "the directness or indirectness of the asserted injury"); *Pac. Operators Offshore, LLP* v. *Valladolid*, 132 S. Ct. 680, 692 (2012) (Scalia, J., concurring in part and in the judgment) (explaining that proximate cause "cut[s] off otherwise endless chains of cause-and-effect"). The "general" rule is that proximate cause cuts off liability after the "first step." *Lexmark*, 134 S. Ct. at 1394 (internal quotation

marks omitted). Only in "relatively unique circumstances" may a plaintiff recover for injuries suffered through an "intervening link," beyond that first step. *Id.* Such circumstances arise when "the injury alleged is so integral an aspect of the violation alleged" that "there can be no question that proximate cause is satisfied." *Id.* (internal quotation marks and brackets omitted).

To satisfy proximate cause under the FHA, therefore, the injuries must be both "direct and foreseeable." *Paroline*, 134 S. Ct. at 1722. In the mine-run case, these requirements are easily met. For instance, a person who is steered away from a neighborhood because of her race could sue to recover the cost of having to find housing elsewhere, the difference in the cost of living there, and damages for emotional distress. *See* 42 U.S.C. § 3613(c)(1). All of those injuries would be the direct and foreseeable result of discrimination against her. Similarly, a resident of the same neighborhood who is denied the opportunity to live in an integrated community could sue for the loss of social and professional opportunities. Those injuries would be the direct and foreseeable result of discrimination as well.

There are cases, however, in which foreseeability or directness would not be met. Consider first a hypothetical plaintiff whose application for housing is rebuffed for discriminatory reasons; because she has been denied housing, she drives to a different neighborhood to continue her search, is involved in a car accident along the way, and suffers a concussion. The FHA violation did not proximately cause her concussion because that harm is *too fortuitous* to be a *foreseeable* consequence of housing discrimination. Now consider a different hypothetical: Discriminato-

ry housing decisions in a neighborhood lower the demand for housing there, and fewer occupied houses mean less work for the neighborhood gardener, who buys fewer flowers from his preferred flower shop. Although no link in the causal chain is inherently unpredictable, the FHA violation did not proximately cause the flower shop's lost revenue because that plaintiff is *too far removed* to have a *direct* relationship with the FHA violation.

2. The Eleventh Circuit misunderstood the dual nature of proximate cause. It reduced the concept to "foreseeability," encompassing only the predictability of any one individual link in the causal chain. Pet. App. 56a.[7] The Eleventh Circuit's approach would thus preclude liability only in the event of a freak injury, which no one could predict.

That could not have been what Congress intended. As explained above, the proximate-cause requirement is generally understood to account for not only foreseeability, but also directness. Stripped of the

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[7]The term "foreseeability" has elsewhere been used to encompass *both* the predictability of any given layer of harm *and* the remoteness of the plaintiff from the prohibited conduct. *See* Dobbs et al., *supra*, § 202, at 695-696 ("The great majority of cases hold negligent defendants liable only for harm of the same general kind that they should have reasonably foreseen and should have acted to avoid. The same principle holds defendants liable only to plaintiffs who are in the same general class of people who were at risk from his negligence."); *Hemi Grp.*, 559 U.S. at 22-24 (Breyer, J., dissenting) (describing as "foreseeable" those losses that the defendant had intended, and emphasizing that the plaintiff fell within the class of persons the statute sought to protect). The Eleventh Circuit, however, eschewed any formulation that would consider the remoteness of a claimed injury.

latter, proximate cause would "hardly [be] a condition at all." *Consol. Rail Corp.* v. *Gottshall*, 512 U.S. 532, 553 (1994). Liability would extend to all remote-if-unremarkable consequences, stretching as far as the imagination. The causal chain could be never-ending—like in the children's book *If You Give a Mouse a Cookie*.

Proximate cause does not tolerate such infinite liability for good reason. The directness component serves several important functions.

First, it contributes to the overarching objective of proximate cause: the need to draw a line to cabin liability. "In a philosophical sense, the consequences of an act go forward to eternity." *Exxon Co., U.S.A.* v. *Sofec, Inc.*, 517 U.S. 830, 838 (1996) (quoting Keeton et al., *supra*, § 41, at 264). Yet "[s]omewhere a point will be reached when courts will agree that the link has become too tenuous." *Id.* (internal quotation marks omitted). The law cuts off liability at that point out "of convenience, of public policy, of a rough sense of justice." *CSX Transp.*, 564 U.S. at 692 (internal quotation marks omitted); *see also id.* at 707 (Roberts, C.J., dissenting) (proximate cause "limits liability at some point before the want of a nail leads to loss of the kingdom").

Second, barring recovery for remote injuries avoids a number of practical difficulties, as this Court first catalogued in the RICO context. For example, the more remote an injury is, "the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent, factors." *Holmes*, 503 U.S. at 269. Similarly, awarding damages to plaintiffs at multiple different levels of attenuation could risk

duplicative recoveries. *Id.* And most notably, "directly injured victims can generally be counted on to vindicate the law as private attorneys general, without any of the problems attendant upon suits by plaintiffs injured more remotely." *Id.* at 269-270. All of those same practical considerations apply in an FHA case, just as in a RICO case.

Third, with respect to statutory causes of action like this one—in contrast with common-law tort claims—the directness component of proximate cause is a critical way to effectuate legislative purpose. Where "the evident policy" of a statute is to protect certain individuals, "the plaintiff must bring himself within that class in order to maintain an action based on the statute." Keeton et al., *supra*, § 36, at 224; *see also id.* § 43, at 286 ("a statute intended to protect only a particular class of persons * * * creates no duty to any other class"). If courts fail to distinguish between those losses directly caused by a statutory violation and those losses several degrees removed, they give effect only to Congress's intent to *deter* behavior and ignore Congress's complementary intent to *protect* a particular class.

3. The Eleventh Circuit nevertheless concluded that, in considering an FHA suit, it could ignore the directness or remoteness of a claimed injury. Pet. App. 49a, 53a. It pointed specifically to this Court's statement in *Lexmark* that the "[p]roximate-cause analysis is controlled by the nature of the statutory cause of action." 134 S. Ct. at 1390.

The Eleventh Circuit's reliance on *Lexmark* is misplaced. The Court in that case did not cast doubt on the "general[]" rule that proximate cause "bars suits for alleged harm that is 'too remote' from the defend-

ant's unlawful conduct." *Id.* Nor did it call into question the "general" rule that anyone "beyond the first step" is too remote. *Id.* at 1394 (internal quotation marks omitted). Instead, what the Court meant was that the nature of the statutory cause of action can determine whom that "first step" reaches.

The Court's own analysis in *Lexmark* proves the point. The Lanham Act prohibits false advertising. And theoretically, the Court acknowledged, an injury to a commercial competitor might be considered "derivative" of an injury suffered by a consumer deceived by the advertising. *Id.* at 1391. "[B]ut since the Lanham Act authorizes suit only for commercial injuries, the intervening step of consumer deception is not fatal to the showing of proximate causation required by the statute." *Id.* Rather, the competitor should be considered "directly" harmed. *Id.* at 1394. Thus, the statutory scheme did not negate certain aspects of proximate cause; it determined that harms to competitors properly fell within the "first step." Under a different statutory scheme geared toward consumers, by contrast, the very same false advertising claim might be considered too remote if asserted by a commercial competitor rather than a consumer herself. *That* is the sense in which "the nature of the statutory cause of action" controls the proximate-cause analysis. *Id.* at 1390.

So too here. The directness component of proximate cause applies to the FHA just as to the Lanham Act and to other federal statutory schemes. The FHA's text and purpose do, however, determine which types of plaintiffs stand at the "first step" from an alleged statutory violation.

The FHA is an antidiscrimination statute. So of course, those who have been discriminated against on the basis of a protected characteristic, including testers, have suffered an injury at the first step. *See Havens*, 455 U.S. at 374. But contrary to the Eleventh Circuit's suggestion, Pet. App. 53a, the first step can include more than just those victims. When, for instance, minorities are steered away from a community, those immediately harmed can also include the community's residents (who are deprived of "living in an integrated society") and the community itself (which is deprived of "an integrated neighborhood"). *Gladstone*, 441 U.S. at 110-111 (internal quotation marks omitted). There is no intervening step between their injuries and the injury to the person discriminated against; a single act of discrimination injures them all at the same time—denying one the right to live in the community, and the others the right to have her as a neighbor and resident. "[T]here is no reason to regard [one] party's injury as derivative of the other's." *Lexmark*, 134 S. Ct. at 1394. Each is injured at the first step.[8]

Even the nonprofit organization in *Havens*, though possibly a step removed from a discriminatory act, diverted resources to combat the specific housing discrimination at issue. *See* 455 U.S. at 368-369. At

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[8]To be sure, the Court has sometimes characterized "neighborhood" standing as "indirect." *Havens*, 455 U.S. at 375; *see also Gladstone*, 441 U.S. at 101-102. But that just means neighborhood residents are not themselves discriminated against; it does not mean their injury is less immediate for purposes of proximate cause. The FHA treats neighborhood residents as immediate victims, just as the Lanham Act treats commercial competitors as immediate victims. *Cf. Lexmark*, 134 S. Ct. at 1391.

a minimum, then, it presented the "relatively unique circumstances" in which there is a near-perfect correlation between the plaintiff's injury and the statutory violation. *See Lexmark*, 134 S. Ct. at 1394. The proximate-cause requirement was thus satisfied.

The statute teaches this much; ordinary principles of proximate cause do the rest.

C. The City's Alleged Injuries Are Too Remote

To recap: The "general" rule is that proximate cause does not extend "beyond the first step." *Lexmark*, 134 S. Ct. at 1394 (internal quotation marks omitted). But in "relatively unique circumstances," injuries suffered through an "intervening link" may be "so integral[ly]" tied to the statutory violation that proximate cause is satisfied. *Id.* (internal quotation marks omitted).

Here, the City falls far beyond the first step. And its injuries are not so tightly bound up in the claimed discrimination that this is the "relatively unique" case in which a derivative victim nevertheless satisfies proximate cause. Far from it.

1. The City relies on causal chains that are several links too long. Its complaint accuses Wells Fargo of violating the FHA by engaging in discriminatory lending practices, which resulted in unfavorable loan terms for minorities. J.A. 269-272 (Compl. ¶¶ 6-10). Those unfavorable loan terms, it alleges, caused the borrowers to default on the loans, which led to a "disproportionately high number of foreclosures * * * in the minority neighborhoods of Miami." J.A. 272 (Compl. ¶ 11). And those foreclosures, in turn, had two purported effects. First, the foreclosures led to abandoned homes, which caused the property values

of the abandoned homes and of other neighboring homes to drop, which in turn decreased the City's property tax revenues. J.A. 335-338 (Compl. ¶¶ 156-170). Second, the foreclosures led to abandoned homes, which lay abandoned for sufficient time to fall into disrepair, which encouraged vagrancy and crime, which increased the demand for services from various municipal agencies like the police and fire departments, which in turn caused an uptick in City spending. J.A. 339-341 (Compl. ¶¶ 171-179).

To complicate matters further, those causal chains involve a host of independent actors: borrowers, who defaulted; creditors, who foreclosed; neighbors, who moved away; buyers, who gave lower offers; assessors, who discerned lower home values; squatters, vandals, or other criminals, who congregated in or near the empty homes; police and fire departments (or policymakers above them), who adjusted the level of municipal services. All of these actors entered the scene long after Wells Fargo had exited. And the City does not and cannot allege that Wells Fargo maintained any influence over these many independent forces.

Under either of its two theories, then, the City's complaint contains several layers of attenuation. The City is not a person who was offered discriminatory loan terms, nor a person whose home was foreclosed upon, nor a person whose neighborhood composition was affected by discriminatory loan terms, nor a person whose property value decreased as a result of foreclosures, nor a person in a neighborhood experiencing foreclosure-induced blight. In fact, its purported injuries fall so far down the line that the relevance of any discrimination has faded away entirely; the foreclosures could have happened for

any reason and could have been distributed evenly across all races, and the City's damages would be no different. *See supra* pp. 29-30. Call it indirect, remote, or attenuated—whatever the label, the City "complain[s] of harm flowing merely from the misfortunes visited upon a third person by the defendant's acts" and thus "stand[s] at too remote a distance to recover." *Holmes*, 503 U.S. at 268-269.

Indeed, *Lexmark* described similar circumstances to exemplify the type of claim that flunks the proximate-cause test. After concluding that a commercial competitor could bring a Lanham Act claim if it could show "economic or reputational injury flowing directly from the [defendant's] deception," the Court cautioned that "[t]hat showing is generally not made when the deception produces injuries to a fellow commercial actor that in turn affect the plaintiff." *Lexmark*, 134 S. Ct. at 1391. For example, if the defendant's false advertising forces a competitor out of business, "the competitor's landlord, its electric company, and other commercial parties who suffer merely as a result of the competitor's inability to meet its financial obligations" are not entitled to bring suit. *Id.* (internal quotation marks and brackets omitted).

The City's claim is at least as attenuated as the hypothetical landlord's in *Lexmark*. Both the City and the landlord claim a statutory violation that causes economic harm to an immediate victim, whose troubled finances have monetary repercussions—whether lost tax revenue or lost rent—for more distant entities. And for good measure, the City here relies on a few extra steps (such as between discrimination and foreclosures, or between foreclosures and vagrancy) that introduce further extraneous varia-

bles. *See Holmes*, 503 U.S. at 269 (cautioning that "the less direct an injury is," the more likely "other, independent, factors" come into play).

Hemi Group offers another useful analogy As here, a city claimed that statutory violations had resulted in diminished tax revenues. *See* 559 U.S. at 6. And as here, the city relied on a multi-step causal theory: The defendant had committed RICO fraud by failing to provide customer information to the State, the State in turn was unable to provide information to the city, the city in turn could not determine which customers had paid a cigarette tax, and the city thus could not pursue those customers for unpaid taxes. *Id.* at 9. The majority had little trouble concluding that "the City's theory of causation requires us to move well beyond the first step" and "is far too indirect." *Id.* at 10. That was dispositive even though the city's loss of tax revenues may have been the *intended result* of the alleged scheme. *See id.* at 23-24 (Breyer, J., dissenting). The City here lacks even that connection. Its asserted harms are not just attenuated but also coincidental, no different from the harms that any other person or entity might suffer in a crippled housing market.[9]

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[9]The City has alleged that certain analytic tools could have predicted the foreclosures. *See* J.A. 277, 326 (Compl. ¶¶ 22, 139). But that is beside the point. As *Hemi Group* illustrates, the possibility that a defendant could have anticipated eventual effects on a remote plaintiff—or even intended those effects—is insufficient. *See* 559 U.S. at 10; *Consol. Rail*, 512 U.S. at 553 ("'[T]here are clear judicial days on which a court can foresee forever and thus determine liability but none on which that foresight alone provides a socially and judicially acceptable limit on recovery.'" (brackets in original) (quoting *Thing* v. *La Chusa*, 771 P.2d 814, 830 (Cal. 1989))). And in any event, the

2. Therein lies another fatal flaw in the City's theory: It has no principled stopping point. The Eleventh Circuit's narrow view of foreseeability required only that each level of harm flowed predictably to the next. Why stop, then, at the City's claimed loss of tax revenue? Lost revenue might foreseeably lead to a reduction in municipal workforces. So a laid-off city employee could presumably bring suit, too. And why stop at the city employee's claimed lost wages? If that individual is now unemployed, he might foreseeably spend less money at the local gas station fueling up for his commute. So the owner of the gas station could presumably bring suit, too. The possible effects, "like the ripplings of the waters," are "without end." *Consol. Rail*, 512 U.S. at 553.

Nor is it sufficient to draw the line at the City's asserted injuries and refuse to take any further steps. That is because the City alleges financial injuries that stem from an increase in home foreclosures, and innumerable other potential plaintiffs stand at the same distance from any discriminatory lending decisions. It is not difficult to imagine the many neighborhood businesses that might suffer financial injuries from a high foreclosure rate in their communities: the coffee shop, the dry cleaner, the landscaper, the plumber. From an attenuation standpoint, the City's claimed economic harm is no different. Neither it nor any of those other potential plaintiffs were discriminated against or have interests closely intertwined with those who were. So neither it nor any of those other potential plaintiffs

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assertion that Wells Fargo could have anticipated foreclosures does not mean that it equally could have anticipated the secondary or tertiary financial effects of such foreclosures.

can satisfy the FHA's proximate-cause requirement.[10]

In short, the City's claims here are "purely derivative." *Lexmark*, 134 S. Ct. at 1390. And nothing in the City's proposed amended complaint would change that outcome. Its claim for damages would still rely on the same lengthy causal chains involving lost tax revenues and increased municipal spending. J.A. 429 (Proposed First Am. Compl. ¶ 192). And the proposed amended complaint does not even bother to articulate how the City's newly asserted interests in "promoting fair housing and securing the benefits of an integrated community" were injured—much less explain how any injury was proximately caused by Wells Fargo's alleged conduct. J.A. 416-417 (Proposed First Am. Compl. ¶ 156); *see supra* pp. 33-35.

However elastic proximate cause might be, it cannot be stretched so far as to encompass the City's asserted injuries in this case. For this reason as

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[10]Indeed, the City's allegations of cause-and-effect-and-effect-and-effect are so tenuous that they fail even Article III's traceability requirement. *See Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (requiring that the injury "be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party" (internal quotation marks, brackets, and ellipses omitted)). Any loss of city revenues or increase in city expenditures is not fairly traceable to Wells Fargo's conduct in light of the many intervening actions of third parties—the personal finances of homeowners, the decisions of local vagrants and criminals, the rising regional unemployment rate, the bursting American housing bubble, and the global recession, to name a few. For the same reasons, the City's financial injuries were not foreseeable, even under the Eleventh Circuit's misguided test.

well, the City's complaint should be dismissed, and its proposed amendments rejected.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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ADDENDUM

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STATUTORY PROVISIONS INVOLVED

FHA § 802, 42 U.S.C. § 3602, provides in pertinent part:

Definitions

As used in this subchapter—

(a) "Secretary" means the Secretary of Housing and Urban Development.

* * * *

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, receivers, and fiduciaries.

* * * *

(f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, 3606, or 3617 of this title.

* * * *

(i) "Aggrieved person" includes any person who—

(1) claims to have been injured by a discriminatory housing practice; or

(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

* * * *

FHA § 804, 42 U.S.C. § 3604, provides in pertinent part:

Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

* * * *

FHA § 805, 42 U.S.C. § 3605, provides in pertinent part:

Discrimination in residential real estate-related transactions

(a) In general

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) "Residential real estate-related transaction" defined

As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance—

(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

* * * *

FHA § 810, 42 U.S.C. § 3610, provides in pertinent part:

Administrative enforcement; preliminary matters

(a) Complaints and answers

(1) (A) (i) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the Secretary alleging such discriminatory housing practice. The Secretary, on the Secretary's own initiative, may also file such a complaint.

* * * *

(g) Reasonable cause determination and effect

* * * *

(2) (A) If the Secretary determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 3612 of this title.

* * * *

FHA § 812, 42 U.S.C. § 3612, provides in pertinent part:

Enforcement by Secretary

(a) Election of judicial determination

When a charge is filed under section 3610 of this title, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (*o*) of this section in lieu of a hearing under subsection (b) of this section. The election must be made not later than 20 days after the receipt by the electing person of service under section 3610(h) of this title or, in the case of the Secretary, not later than 20 days after such service. The person making such election shall give notice of doing so to the Secretary and to all other complainants and respondents to whom the charge relates.

(b) Administrative law judge hearing in absence of election

If an election is not made under subsection (a) of this section with respect to a charge filed under section 3610 of this title, the Secretary shall provide an opportunity for a hearing on the record with respect to a charge issued under section 3610 of this title. The Secretary shall delegate the conduct of a hearing under this section to an administrative law judge appointed under section 3105 of Title 5. The administrative law judge shall conduct the hearing at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) Rights of parties

At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 3611 of this title. Any aggrieved person may intervene as a party in the proceeding. The Federal Rules of Evidence apply to the presentation of evidence in such hearing as they would in a civil action in a United States district court.

* * * *

(*o*) Civil action for enforcement when election is made for such civil action

(1) If an election is made under subsection (a) of this section, the Secretary shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on

behalf of the aggrieved person in a United States district court seeking relief under this subsection. Venue for such civil action shall be determined under chapter 87 of Title 28.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

* * * *

FHA § 813, 42 U.S.C. § 3613, provides in pertinent part:

Enforcement by private persons

(a) Civil action

(1) (A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

* * * *

FHA § 814, 42 U.S.C. § 3614, provides in pertinent part:

Enforcement by Attorney General

(a) Pattern or practice cases

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

* * * *

(e) Intervention in civil actions

Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) of this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 3613 of this title.

* * * *